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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,802	12/19/2001	Lyndon J. Hurley	21 - 1266	6093

7590 11/25/2003

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EXAMINER	
COHEN, AMY R	

ART UNIT	PAPER NUMBER
2859	

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/024,802	HURLEY, LYNDON J.	
	Examiner	Art Unit	
	Amy R Cohen	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 September 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *16-18, 32* is/are allowed.

6)☒ Claim(s) *1-12,19-25 and 28* is/are rejected.

7)☒ Claim(s) *13-15,26,27 and 29-31* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-12, 19-25, 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Whiteis (U. S. Patent No. 3,108,302).

Whiteis teaches a deflection gauge (10) with a dislodging system (12) comprising: an elongate deflection gauge (10) capable of determining a minimum diameter of a lumen of a pipe; and dislodging means (12) for dislodging the deflection gauge from a lodged condition in the lumen of the pipe, the dislodging means being impactable against the deflection gauge while the deflection gauge is positioned in the lumen of the pipe (Col 2, lines 30-36 and lines 55-65).

Whiteis teaches the deflection gauge with dislodging system wherein the dislodging means is movably mounted on the deflection gauge such that the dislodging means is slidable with respect to the deflection gauge (Col 2, lines 32-65).

Whiteis teaches the deflection gauge with dislodging system wherein the dislodging system is movable with respect to the deflection gauge in a direction oriented substantially parallel to the longitudinal axis of the deflection gauge (Figs. 4 and 5).

Whiteis teaches the deflection gauge with dislodging system wherein the dislodging means is slidably movable with respect to the deflection gauge by pulling a cord when the cord is connected to the dislodging means (Col 2, lines 40-65).

Whiteis teaches the deflection gauge with dislodging system wherein the dislodging means impacts the deflection gauge in a direction oriented substantially parallel to the longitudinal axis of the deflection gauge (Figs. 1, 4, and 5).

Whiteis teaches the deflection gauge with dislodging system wherein the dislodging means includes a slide member (46) slidably mounted on the deflection gauge for sliding in a longitudinal direction oriented substantially parallel to the longitudinal axis of the deflection gauge, the slide member having opposite ends (Col 2, lines 32-39).

Whiteis teaches the deflection gauge with dislodging system wherein the deflection gauge includes a pair of spaced end plates (30, 32), and wherein the slide member has a length greater than a distance between outer surfaces of the end plates of the deflection gauge (Fig. 1).

Whiteis teaches the deflection gauge with dislodging system wherein the deflection means includes a stop member (40, 42) mounted on the slide member for limiting sliding movement of the slide member with respect to the deflection gauge.

Whiteis teaches the deflection gauge with dislodging system wherein the stop member is mounted at an end of the slide member (Fig. 1).

Whiteis teaches the deflection gauge with dislodging system wherein the stop member (40) and another stop member (42) are mounted on the slide member with each stop being mounted adjacent to an opposite end of the slide member (Fig. 1).

Whiteis teaches the deflection gauge with dislodging system wherein the dislodging means includes a hook (54, 56) mounted on the slide member for connecting a cord (60, 62) thereto.

Whiteis teaches the deflection gauge with dislodging system wherein the hook (54) and another hook (56) are mounted on the slide member with each hook member being mounted on an opposite end of the slide member (Fig. 1).

Whiteis teaches the deflection gauge with dislodging system wherein the deflection gauge has an outer calibrated diameter that is fixed in size and not adjustable (Col 1, lines 8-19 and Col 2, lines 3-20).

Whiteis teaches the deflection gauge with dislodging system wherein the dislodging means is freely slidable with respect to all portions of the deflection gauge in the longitudinal direction of the deflection gauge (Col 2, lines 32-65).

Whiteis teaches the deflection gauge with dislodging system wherein the dislodging means is impactable against the deflection gauge without varying a calibrated diameter of the deflection gauge along a circumference of the deflection gauge (Col 2, lines 30-72).

Whiteis teaches the deflection gauge system for passing through a lumen of a pipe to determine a minimum diameter of the lumen, the system comprising: gauge means (10) for determining a minimum diameter of a lumen of a pipe; and impacting means (12) on the deflection gauge for impacting against the deflection gauge to dislodge the deflection gauge from a lodged condition in the lumen of the pipe (Col 3, lines 30-72).

Whiteis teaches the deflection gauge system wherein the impacting means includes sliding means for freely sliding with respect to the deflection gauge (Col 2, lines 21-47).

Whiteis teaches the deflection gauge system wherein the impacting means includes limiting means (40, 42) for limiting sliding of the sliding means with respect to the deflection gauge.

Whiteis teaches the deflection gauge system wherein the limiting means impacts the deflection gauge when the limiting means limits sliding of the sliding means with respect to the deflection gauge (Col 2, lines 40-65 and Figs. 4 and 5).

Whiteis teaches the deflection gauge with dislodging system wherein the deflection gauge has a central longitudinal axis extending between longitudinally spaced opposite ends of the deflection gauge (Fig. 1), and includes a pair of skid members (20), each of the skid members extending in a respective plane radiating outwardly from the central longitudinal axis of the deflection gauge (Figs. 1 and 3 and Col 2, lines 5-20).

Allowable Subject Matter

3. Claims 13-15, 26, 27, 29-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Claims 16-18, 32 are allowed.

Reasons for Allowance

5. The following is a statement of reasons for the indication of allowable subject matter:

Claims 13-15, 26 and 27: The prior art of record does not disclose or suggest a deflection gauge with dislodging system comprising a plurality of skid members extending in a longitudinal direction between end plates (or ends) in combination with the remaining limitations of the claims.

Claims 29-30: The prior art of record does not disclose or suggest a deflection gauge with dislodging system comprising a plurality of skid members each having a radially outermost surface extending substantially parallel to a longitudinal axis of the deflection gauge in combination with the remaining limitations of the claims.

Claim 31: The prior art of record does not disclose or suggest a deflection gauge with dislodging system comprising a plurality of skid members each of the skid members forming a loop comprising a pair of end portions in combination with the remaining limitations of the claims.

6. The following is an examiner's statement of reasons for allowance:

Claims 16-18, 32: The prior art of record does not disclose or suggest a deflection gauge with a dislodging system comprising: a plurality of skid members wherein the radially outermost surfaces of the skid members extending substantially parallel to each other and substantially parallel to a longitudinal axis of the deflection gauge in combination with the remaining limitations of the claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

7. Regarding claims 1-12, 19-25: In response to applicant's argument that the Whiteis reference does not teaches a deflection gauge capable of determining a minimum diameter of a

lumen of a pipe, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The flanges (20) of the deflection gauge of Whiteis would in fact be capable of determining a minimum diameter since there is a diameter formed by the outer edges of the flanges (20). Using this measurement of the diameter formed by the outer edges of the flanges, one would be able to determine a minimum diameter of a lumen of a pipe. Although this may not be specifically stated in the Whiteis reference, the deflection gauge of Whiteis could perform this function.

In addition, the Applicant further argues that the Whiteis reference does not present a uniform diameter, however, this is not claimed in claim 1 of the Application.

8. Regarding new claim 28: Whiteis states that the flanges (20) of the deflection gauge do extend radially (Fig. 3 and Col 2, lines 5-20), therefore Examiner contends the rejection is proper.

9. Regarding claims 13-15, 18, 26-27, and 29-32: Applicant's amendments have rendered these claims allowable over the prior art as discusses in the paragraphs above.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R Cohen whose telephone number is (703) 305-4972. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (703) 308-3875. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

ARC
November 21, 2003

Diego Gutierrez
Supervisory Examiner
Tech Center 2800